S.B. CIVIL WRIT PETITION NO.1323/2005

Ramu Ram and ors. Vs. Smt. Sajni and ors.

Date : 2.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. JR Beniwal, for the petitioners.
Mr. CR Jhakar, for the respondents.

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Heard learned counsel for the parties.

The petitioners/plaintiffs are aggrieved against the order dated 22.2.2005 by which the trial court refused to reopen the evidence of the plaintiffs which was closed vide order dated 1.2.2005.

According to learned counsel for the petitioner, the petitioner submitted an application for grant of time so that the petitioner may produce his evidence despite the fact that the evidence of the petitioner was closed vide order dated 1.2.2004. It was submitted in the application that the case was fixed by the court for evidence of the plaintiffs on 1.2.2005 by passing the order on 19.1.2005 but inadvertently the plaintiffs recorded the date as 7.2.2005. When the plaintiffs came in the Court on 7.2.2005, they found that the case was not shown in the cause list and when they enquired, they found that their evidence was closed on 1.2.2005. According to the

petitioners, a wrong date was informed by their counsel. The petitioners, therefore, submitted the application on the next date on 22.2.2005 and requested that the witnesses are present today, therefore, evidence may be recorded.

The respondents have submitted reply to the writ petition and raised several objections.

According to learned counsel for the respondents, when the plaintiffs did not appear on 1.2.2005 and they did not disclose any reason for their non-appearance, the court has no option but to close the evidence. It is submitted that there is no provision in CPC for reopening the evidence of the plaintiffs and, therefore, when the trial court rejected the application of the petitioners within its jurisdiction, it may not be interfered by this Court in its extraordinary jurisdiction under Article 227 of the Constitution of India. It is also submitted that the facts alleged by the petitioners are absolutely wrong and the petitioners' advocate even did not produce the copy of their daily diary to show that the date was wrongly recorded by them. It is further submitted that the order under challenge can be challenged by filing appeal in case decree is passed against the plaintiffs.

I have considered the submissions of learned counsel for the parties.

It is clear from the impugned order dated 22.2.2005 that the trial court rejected the petitioner’s application

on the ground that there is no provision under CPC by which the trial court can allow the recording of evidence of the plaintiff after closing the evidence by order dated 1.2.2005. The trial court has not considered the facts mentioned in the application at all nor decided the fact whether in fact there was mistake in taking note of the date for the case or it was an excuse for getting the case delayed.

It is true that the orders under challenge dated 1.2.2005 and 22.2.2005 can be challenged in an appeal but it is settled law that the appeal itself is no absolute bar against the exercise of jurisdiction by the Court in an appropriate case. Normally this Court would not like to interfere in the orders passed by the Civil Courts but at the same time, if the Court comes to the conclusion that serious miscarriage of justice will occasion, the Court can certainly interfere in the order but it depends on the facts of each case. In the instant case, when the plaintiffs' witnesses were present in the Court on 22.2.2005 and when the Court has not decided that the reasons given by the petitioner in his application are false, this Court thinks it proper to interfere in the impugned order.

It will be worthwhile to mention here that issues were framed on 19.1.2005 and on the first date fixed for evidence of the plaintiffs, the evidence was closed because of absence of not only the plaintiffs and his witnesses but because of absence of his advocate also, therefore, in this

case, the evidence of the plaintiffs was closed on the first date fixed for evidence and, therefore, this Court deems if proper in the peculiar facts and circumstances of the case that the petitioners be allowed opportunity to produce his evidence.

In view of the above, this writ petition is allowed, the impugned orders dated 1.2.2005 and 22.2.2005 are set aside and the plaintiffs shall have two opportunities to produce all their witnesses before the trial court. The trial court may fix the dates for evidence of the plaintiffs.

(PRAKASH TATIA), J.

S.Phophaliya